
UTAH LABOR COMMISSION

KAREN STONE,

Petitioner,

vs.

**WAREHOUSE DEMO SERVICES,
WORKERS COMPENSATION FUND,
and ALASKA NATIONAL INSURANCE
CO.,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 04-0602

Karen Stone asks the Utah Labor Commission to review Administrative Law Judge Marlowe's denial of benefits to Ms. Stone under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. Stone claims workers' compensation benefits from Warehouse Demo Services and its insurance carriers, Alaska National Insurance Co. and Workers Compensation Fund, (hereafter referred to jointly as "Warehouse") for a back injury allegedly caused by two work accidents that occurred on November 11, 2002, and May 26, 2004. After holding an evidentiary hearing, Judge George referred the medical aspects of the case to a medical panel. The case was later reassigned to Judge Marlowe. After reviewing the panel's report, Judge Marlowe found the first work accident did not satisfy the more stringent test for legal causation, which was required because of a preexisting back condition, and that the second accident did not medically cause her back condition. Therefore Judge Marlowe denied benefits.

In her motion for review, Ms. Stone argues that the November 11, 2002, work accident was compensable because the exertion involved was "unusual or extraordinary," thereby satisfying the more stringent test for legal causation. Ms. Stone does not dispute Judge Marlowe's finding that the second accident did not medically cause her back condition. Therefore the Commission will not review Judge Marlowe's decision to deny benefits for the second accident.

FINDINGS OF FACT

The Commission adopts Judge Marlowe's findings of facts. The facts relevant to the motion for review are as follows:

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On November 11, 2002, Ms. Stone stood on a cement riser about 8-12 inches high to retrieve a 20 pound box off a high shelf. After retrieving the box, she stepped backward off the riser, twisted to the right, and—because she miscalculated the distance down from the riser—she came down hard on her right leg. She felt an immediate pop in her low back. She was diagnosed with acute sciatica with radicular symptoms and an x-ray revealed mild lower lumbar disc degenerative change.

DISCUSSION AND CONCLUSION OF LAW

The only issue before the Commission is whether the exertion involved when Ms. Stone stepped back hard off the riser was “unusual or extraordinary.” Section 34A-2-401 of the Utah Workers’ Compensation Act provides benefits to workers injured by accident “arising out of and in the course of” employment. To qualify for benefits under the foregoing standard, an injured worker must establish that his or her work was the “legal cause” of the injury. Allen v. Industrial Commission, 729 P.2d 15, 25 (Utah 1986). The requirement of legal causation is explained in Price River Coal Co. v. Industrial Commission, 731 P.2d 1079, 1082 (Utah 1986):

Under Allen, a usual or ordinary exertion, so long as it is an activity connected with the employee’s duties, will suffice to show legal cause. However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some **unusual or extraordinary exertion** over and above the “usual wear and tear and exertions of nonemployment life.”(Citations omitted; emphasis added.)

Because Ms. Stone suffered from a preexisting condition that contributed to her back condition, her claim is subject to the more stringent test for legal causation, which requires that she show her work related exertion was “unusual or extraordinary.” The Commission does not find that the exertion described in the record and Ms. Stone’s motion for review constitutes an unusual or extraordinary exertion as compared to the usual wear and tear exertions of nonemployment life. Therefore, the Commission concludes that Ms. Stone has not satisfied the test for legal causation and cannot prevail on her claim for benefits for the November 11, 2002, work accident.

ORDER

The Commission affirms Judge Marlowe’s decision. It is so ordered.

Dated this 25th day of February, 2009.

Sherrie Hayashi
Utah Labor Commissioner

****IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOW ON NEXT PAGE.****

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NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.